IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.72 of 1998
Date of decision:27.10.2006

The Commissioner of Income Tax, (Central) Ludhiana

....Petitioner

versus

M/s. Nahar Spinning Mills Limited, Ludhiana

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. SK Garg Narwana, Advocate, for the revenue.

Mr. Sanjay Bansal, Advocate, for the respondent.

JUDGMENT:

Following questions have been referred for opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, arising out of its order dated 11.4.1996 in ITA No.1385/Chandi/1994, for the assessment year 1992-93:-

> "i) Whether, on the facts and in the circumstances of the case, the Income tax Appellate Tribunal was right in law in holding that prima-facie adjustment made under section 143(1)(a) is not permitted by law, when on the face of the statement of accounts, it was clearly a wrong claim of the assessee?
>
> ii) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that income from non-trade investment forms part of profit from business or profession for the purpose of deduction under section 80-HHC?"

The assessee filed its return for the assessment year 1992-93 on 31.12.1992, claiming deduction under section 80-HHC of the Income tax Act, 1961 (for short, 'the Act'). On 11.3.1994, the assessee filed revised return reducing claim under section 80-HHC of the Act. The Assessing Officer issued notice dated 17.12.1993 under section 143(2) of the Act and,

thereafter, sent intimation under section 143(1)(a) of the Act on 11.1.1994 before filing of the revised return, treating non-trading investment as income from other sources, creating demand for additional tax. The assessee made an application under section 154 of the Act for rectification, which was rejected and appeal of the assessee was dismissed by the Commissioner of Income Tax (Appeals). The tribunal, however, accepted the plea of the assessee and held that having issued notice under section 143(2) of the Act, intimation under section 143(1)(a) of the Act was not permissible.

Learned counsel for the revenue submitted that the view taken by the Tribunal is contrary to law but in support of his arguments, no provision or judgment has been cited.

Learned counsel for the assessee, on the other hand, submits that the view taken by the Tribunal is in accordance with the view taken by the Hon'ble Supreme Court in **Commissioner of Income Tax v. Gujarat Electricity Board,** (2003) 260 ITR 84.

We have considered the submissions advanced on behalf of the parties and perused the finding recorded by the Tribunal and the judgment of the Hon'ble Supreme Court in **Gujarat Electricity Board'**s case (supra).

We find that the view taken by the Tribunal is in accordance with the judgment of the Hon'ble Supreme Court in **Gujarat Electricity Board'**s case (supra).

Accordingly, the questions referred are answered against the revenue and in favour of the assessee.

Reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

October 27, 2006
'gs'

(Rajesh Bindal)
Judge